

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:

Chapter 7 Proceeding

**DANNIE C. SIMMONS, JR., and
CATHLEEN M. SIMMONS**

Case No. 15-18808
Honorable Pamela S. Hollis
Hearing Date: September 3, 2015
Hearing Time: 10:00 a.m.

Debtors.

NOTICE OF ROUTINE MOTION

PLEASE TAKE NOTICE that on **Thursday, September 3, 2015**, at the hour of **10:00 a.m.**, I shall appear before the Honorable Pamela S. Hollis, Bankruptcy Judge, in Room 680, United States Courthouse, 219 S. Dearborn St., Chicago, Illinois 60604 or any other Judge sitting in her stead, and shall then and there present **ROUTINE MOTION OF HELENE PRINCIPATO FOR RULE 2004 EXAMINATION OF DEBTOR DANNIE C. SIMMONS, JR.**, a copy of which is attached and is hereby served upon you.

By: /s/ Richard H. Fimoff
One of her attorneys

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CERTIFICATE OF SERVICE

I, Richard H. Fimoff, an attorney, state that pursuant to Local Rule 9013-1(D) the above **NOTICE OF MOTION** and the appended **ROUTINE MOTION FOR AN EXTENSION OF TIME TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF DEBT** were filed on August 25, 2015, and served on all persons identified as Registrants on the service list below through the Court's Electronic Notice for Registrants.

/s/ Richard H. Fimoff

SERVICE LIST

Registrants Served Through the Court's Electronic Notice for Registrants

- David R Herzog drhlaw@mindspring.com,
herzogschwartz@gmail.com;il59@ecfbis.com;drh@trustesolutions.net
- Patrick S Layng USTPRegion11.ES.ECF@usdoj.gov
- Thomas W Lynch twlpc@worldnet.att.net, lsarathylaw@gmail.com

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
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In re:

Chapter 7

DANNIE C. SIMMONS, JR. and
CATHLEEN M. SIMMONS

Debtor.

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Honorable Judge HOLLIS
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**ROUTINE MOTION FOR RULE 2004 EXAMINATION
OF DEBTOR DANNIE C. SIMMONS, JR.**

NOW COMES Creditor HELENE PRINCIPATO ("Creditor"), by and through her attorneys, Richard H. Fimoff and the law firm of ROBBINS, SALOMON & PATT, LTD. and as and for her Routine Motion to conduct an examination of Debtor, Dannie C. Simmons, Jr. ("Simmons"), pursuant to Federal Rules of Bankruptcy Procedure (the "Rule") 2004, Section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Local Rules of the United States Bankruptcy Court for the Northern District of Illinois (the "Local Rule") 9013-9, of the Debtor, Creditor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334.
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
4. The statutory predicate for relief requested herein is Section 105(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 2004.
5. This Motion is a "routine motion" pursuant to Local Rule 9013-9(A)(10).
6. The relief requested is being timely and properly presented to this Court pursuant to the Federal Rules of Bankruptcy Procedure (the "Rule") 9006(b)(1).

BACKGROUND

7. On September 19, 2014 (the "Petition Date"), Simmons and Cathleen M. Simmons filed their joint voluntary bankruptcy petition commencing this case Chapter 7 of the Bankruptcy Code.

8. Prior to the petition date, Simmons became indebted to Creditor for damages incurred in rectifying the substandard, faulty and defective work performed by Simmons.

RELIEF REQUESTED

9. Creditor wishes to examine the Debtor as to his assets and liabilities, as well his business activities and entities.

10. Creditor therefore requests that this Court enter an order authorizing, but not directing, the issuance of subpoenas and document requests pursuant to Bankruptcy Rule 2004, which would allow and entitle Creditor to demand the production of documents and conduct examinations under oath of Simmons.

BASIS FOR RELIEF

11. The Court may order, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, upon motion of any party in interest, the examination of an entity relating to:

... the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

Fed. R. Bankr. P. 2004(b).

12. Creditor seeks to examine Debtor, Dannie C. Simmons, Jr. in order to identify and recover assets of the Estate for the benefit of this estate and its creditors. As one court notes:

The discovery of assets and examination of transactions also preserves creditors' rights. To achieve these purposes, Rule 2004 examinations 'are broad and unfettered and in the nature of fishing expeditions.' The scope of a Rule 2004 examination is much broader than that permitted by discovery under the Federal Rules of Civil Procedure (FRCP).

See Pontikes v. Sip Claimants (In re Comdisco, Inc.), No. 06 C 1535, 2006 WL 2375458 at *6 (N.D. Ill. Aug. 14, 2006) (*citations omitted*); *see also 2435 Plainfield Ave. v. Township of Scotch*

Plains (In re 2435 Plainfield Ave.), 223 B.R. 440, 456 (Bankr. D. N.J. 1998) ("A Rule 2004 exam has been explained as a broad investigation into the financial affairs of the debtor for the purpose of the discovery of assets of the estate and the exposure of fraudulent conduct.").

NOTICE

13. Notice of this Motion has been given to: (a) the Debtor; (b) the United States Trustee for the Northern District of Illinois; and (c) all parties which receive notice through the Court's ECF filing system.

14. Creditor requests that the Court waive any further notice of this Motion.

15. This request is timely pursuant to Rule 9006(d), and is made in good faith, and not for the purpose of harassment or delay.

16. The granting of this request will not cause any party to suffer prejudice, while the denial of this request will cause Creditor to suffer great prejudice.

WHEREFORE, HELENE PRINCIPATO respectfully requests that the court enter an Order, substantially in the form attached hereto, authorizing, but not directing, HELENE PRINCIPATO to cause subpoenas to issue and conduct examinations of the Debtor, Dannie C. Simmons, Jr. and to compel the production of documents pursuant to Bankruptcy Rule 2004, all upon reasonable notice, and which grants such further or other relief that this Court deems just and equitable.

Dated: August 25, 2015

Respectfully Submitted,
Creditor HELENE PRINCIPATO

By: /s/ Richard H.Fimoff
One of her attorneys

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